

ARTICLE 10

Disciplinary Action

Section 1. General

The parties recognize the authority of the Employer to reprimand in writing, suspend, discharge or take other appropriate disciplinary or corrective action against an employee only for just cause. Discipline, when invoked, will normally be progressive in nature; however, the Employer shall have the right to invoke a penalty which is appropriate to the seriousness of an individual incident or situation.

Section 2. Investigation and Representation

Allegations or other assertions of failure of proper employee conduct or performance are not charges, but constitute a basis for appropriate investigation by the Employer. The parties agree that disciplinary action must be supported by timely and accurate investigation. The employee will cooperate in the investigation, to the extent possible including responding to questions related to the investigation. Such investigations must be initiated within fifteen (15) weekdays from the date that the Employer knew or could reasonably have known of the employee's improper conduct or performance. Failure of the Employer to act within the above cited time limit shall bar the Employer from taking any action against the Employee relative to the specific conduct in question. Except in unusual circumstances, such investigation shall be completed within 15 week days of the initiation of the investigation.

An employee shall be entitled to a Union representative, if requested, at any meeting at which disciplinary action may or will take place, or at any investigatory interview of the employee by the Employer related to one or more specific charges of misconduct against the employee. The Employer must advise the employee if he/she is entitled to representation under the provisions of this section, and of the purpose of such meeting prior to the meeting. It shall not be the policy of the Employer to take disciplinary action in the course of an investigation unless an emergency suspension or removal from the premises as provided in this Article is warranted.

If the Union Representative is to be an attorney certified by the Union, the employee or Union shall give as much notice as possible to the Employer.

Investigatory conference proceedings may not be taped or electronically recorded in any other manner unless mutually agreed to by the employer and the Union representative at the conference, except in the Departments of State Police and Corrections.

Section 3. Disciplinary Action and Conference.

Except as otherwise provided in sections 3B and 4 of this Article, a disciplinary conference shall be held within thirty (30) calendar days of completion of the investigation, and discipline, if any, shall be imposed within thirty (30) calendar days of the disciplinary conference.

- A. Whenever an employee is to be formally charged with a violation which may lead to discipline, or charges are in the process of being prepared, a Disciplinary Conference shall be scheduled and the employee shall be notified in writing of the claimed violation and disciplinary penalty or possible penalty therefore, and of his/her right to representation at such conference. Nothing shall prevent the Employer from withholding a penalty determination until after the Disciplinary Conference provided herein has been completed.

Whenever it is determined that disciplinary action is appropriate, a Disciplinary Conference shall be held with the employee, at which the employee shall be entitled to Union representation. The representative must be notified and requested by the employee. However, the Employer must notify the employee of his/her right to such representation. No Disciplinary Conference shall proceed without the presence of a requested Representative.

The Representative shall be a local Steward or a Union Staff Person so that scheduling of the Disciplinary Conference shall not be delayed. The employee shall be informed of the nature of the charges against him/her and the reasons that disciplinary action is intended or contemplated. Except in accordance with Sections 3B and 4 of this Article, an employee shall be promptly scheduled for a Disciplinary Conference. Questions by the employee or representative will be fully and accurately answered at such meeting to the extent possible. Response of the employee, including his/her own explanation of an incident if not previously obtained, or mitigating circumstances, shall be received by the Employer. The employee shall have the right to make a written response to the results of the Disciplinary Conference which shall become a part of the employee's file.

Disciplinary conference proceedings may not be taped or electronically recorded in any other manner unless mutually agreed to by the Employer and the Union representative at the conference.

The employee shall be given and sign for a copy of the written notice of charges and disciplinary action, if determined. Where final disciplinary action has not been determined, the notice shall state that disciplinary action is being contemplated. The employee's signature indicates only that the employee has received a copy of the form and shall state that the employee does not necessarily agree with the charges or the proposed disciplinary action. If the employee refuses to sign, the supervisor will write, "Employee refused to sign", and sign his/her own name with the date. A witness signature should be obtained under this circumstance.

- B. In the case of an employee dismissed for unauthorized absence for three (3) consecutive days or more, or who is physically unavailable, a Disciplinary Conference need not be held; however, notice of disciplinary action shall be given.
- C. Notice: Formal notification to the employee of disciplinary action shall be in the form of a letter or form spelling out charges and advising the employee of the right to appeal. The employee must sign for his/her copy of this letter, if presented personally, or the letter shall be sent to the employee by certified mail, return receipt requested. If the employee refuses to sign, the supervisor will write, "Employee refused to sign", and sign his/her own name with the date. A witness signature should be obtained under this circumstance.

Dismissal shall be effective on the date of notice. An employee whose dismissal is upheld shall not accrue any further leave or benefits subsequent to the date of notice. If the employee has received and signed for a written letter of reprimand, no notice is required under this Article.

- D. Any employee who alleges that disciplinary action is not based upon just cause may appeal such action in accordance with the Grievance Procedure.
- E. Any performance evaluation, record of counseling, reprimand, or document to which an employee is entitled under this Agreement shall not be part of the employee's official record until the employee has been offered or given a copy.

Section 4. Emergency Disciplinary Action.

- A. Removal from Premises or Temporary Suspension: Nothing in this Article shall prohibit the Employer from the imposition of an emergency disciplinary suspension and/or removal of an employee from the premises in cases where, in the judgment of the Employer, such action is warranted. As soon as practicable thereafter, investigation and the Disciplinary Conference procedures described herein shall be undertaken and completed.
- B. Suspension for Criminal Charge: An employee arrested, indicted by a grand jury, or against whom a charge has been filed by a prosecuting official may be immediately suspended in accordance with Section C, below, except if charged with a felony, in which case, the provisions of this section regarding felony charges shall apply. Such suspension may, at the discretion of the Appointing Authority, remain in effect until the indictment or charge has been fully disposed of by trial, quashing or dismissal.

Nothing herein shall prevent an employee from grieving the reasonableness of a suspension under this subsection, where the employee contends that the charge does not arise out of the job, or is not related to the job, except that suspension for a felony charge shall not be appealable while such charge is pending. The grievance may be filed directly to Step Two (2) and shall be promptly arbitrated.

An employee who has been tried and convicted on the original or a reduced charge and whose conviction is not reversed, may be disciplined or dismissed from the classified service upon proper notice without the necessity of further charges being brought, and such disciplinary action shall be appealable through the grievance procedure. The record from any trial or hearing may be introduced by the Employer or the Union in such grievance hearing, including arbitration. Under this circumstance a disciplinary conference will be conducted only upon written request of the employee.

An employee whose indictment is quashed or dismissed, or who is acquitted following trial, shall be reinstated in good standing and made whole if previously suspended in connection therewith unless disciplinary charges, if not previously brought, are filed within three (3) weekdays after receipt of notice at the central personnel office of the results of the case, and appropriate action in accordance with this Article is taken against such employee.

Nothing provided herein shall prevent the Employer from disciplining an employee for just cause at any time irrespective of criminal or civil actions taken against an employee or irrespective of their outcome.

- C. Suspension for Investigation: The employer may suspend an employee from duty, with or without pay, for investigation. A suspension for investigation without pay may only be assessed against an employee based upon a reasonable belief that the employee has engaged in a criminal activity. A suspension for investigation which does not involve criminal matters shall not exceed seven (7) consecutive calendar days.

In the event no disciplinary action has been taken by the end of the seven (7) calendar day period, the employer shall either return the employee to active employment status or convert the suspension to paid time. An unpaid suspension for investigation which is based upon a reasonable belief that criminal activity is involved shall not exceed seven (7) calendar days, unless the employee has been charged with a felony. The employee shall lose no pay or benefits for the period of the temporary suspension which exceeds seven (7) calendar days. If the employee is given a disciplinary suspension without pay for fewer days than the suspension for investigation, the employee shall be made whole for all days in excess of the disciplinary suspension, including any overtime to which the employee would have been entitled.

Section 5. Resignation in Lieu of Disciplinary Action.

Where a decision is made to permit an employee to resign in lieu of dismissal, the employee must submit a resignation in writing. This resignation shall be held for twenty-four (24) hours after which it shall become final and effective as of the time when originally given unless retracted during the twenty-four (24) hour period. This rule applies only when a resignation is accepted in lieu of dismissal and the employee shall have been told in the presence of a Representative that

he/she will be terminated in the absence of the resignation. The offer of such resignation in lieu of dismissal shall be at the sole discretion of the Employer and the resignation and matters related thereto shall not be grievable.